Supreme Court, U.S.
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No. 94-1610

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

Aston A. Beadle,
Petitioner,

v.

Hillsborough County Sheriff's Office a/k/a Hillsborough County Sheriff's Department, and Walter C. Heinrich, as Sheriff of Hillsborough County, Florida,
Respondent.

On Petition for A Writ of Certiorari To The United States Court of Appeals For the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Trial Court and the Eleventh Circuit Court of Appeals erred in holding that the Hillsborough County Sheriff's Office made reasonable accommodation to Aston Beadle's religious beliefs.

II. Whether the Trial Court and the Eleventh Circuit Court of Appeals erred in holding that Aston Beadle failed to use his best efforts to work within the reasonable accommodations offered to him.

PARTIES TO THE PROCEEDING

Petitioner: Aston A. Beadle

Respondents: Hillsborough County Sheriff's Office a/k/a Hillsborough County Sheriff's Department, Walter C. Heinrich, as Sheriff of Hillsborough County

Walter C. Heinrich, the employer, as Sheriff of Hillsborough County, Florida, is an elected constitutional officer of the state of Florida and had control and supervision of the Hillsborough County Sheriff's Office and its employees. He therefore has no parent companies or subsidiaries. Respondent makes this declaration pursuant to Supreme Court Rule 29.

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No. 94-1610

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

ASTON A. BEADLE,

Petitioner,

vs.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, and WALTER C. HEINRICH, as Sheriff of Hillsborough County, Florida,

Respondents.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 29 F.3d 589 (11th Cir. 1994).

The Memorandum Opinion of the United States District Court for the Middle District of Florida, Tampa Division, which was entered on October 1, 1994, is reported and reprinted in the appendix at pages 19A-25A in Petitioner's Petition for Writ of Certiorari.

JURISDICTION

Invoking federal jurisdiction under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and under 28 U.S.C. § 1331 (general federal question jurisdiction),

the petitioner brought this suit in the United States District Court for the Middle District of Florida, Tampa Division. On October 4, 1993, the district court entered judgment on the merits in favor of the Defendants.

In response to petitioner's appeal, the Eleventh Circuit on August 23, 1994, entered a judgment and order affirming the district court's judgment. Thereafter a timely petition for rehearing and suggestion(s) for rehearing en banc was filed. The court of appeals on November 3, 1994, entered an order denying the petition for rehearing and suggestion(s) for rehearing en banc.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-2(a) provides:

It shall be an unlawful employment practice for an employer --

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because

of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e(j) provides:

The term "religion" includes all aspects of religious observance and practice, as well a belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

STATEMENT OF THE CASE

A. Relevant Facts

The events which were the subject of this action took place within Defendant's Detention Department. During 1986, in addition to two work release centers, Defendant operated three jails: the maximum security Morgan Street Jail; the medium security Clark Street jail; and the minimum security Orient Road jail (R1-21-VIII.F, G, H; R4-71-3, 4).

In 1986, Defendant's detention employees were assigned to one of three overlapping 9.6 hour shifts each day. Each deputy also had two consecutive days off each work week (R6-79-195). Under Defendant's neutral shift rotation system, each deputy's shift assignment would rotate forward (i.e., day to evening, evening to midnight, etc.) every two months, and days off would rotate backward (i.e., Friday/Saturday to

Thursday/Friday) every 28 days (R6-79-195; R4-71-4).[1]

Plaintiff's initial schedule assigned him to work on his Sabbath. Plaintiff had a discussion with Colonel Parrish at the conclusion of the academy in which Plaintiff advised Colonel Parrish that he was a Seventh Day Adventist and he requested Saturdays off from work (R1-21-Y). Colonel Parrish instructed Plaintiff to put his request in writing (Id.; R4-71-4, 5). Colonel Parrish reserved his decision on whether an accommodation would be made pending receipt of a legal opinion from the Sheriff's legal advisor (Id.). During the pendency of this request for a legal opinion, Colonel Parrish directed Major Cook to be sure that Plaintiff's initial days off be adjusted such that he would not be required to work on his Sabbath (R6-79-48, 114-115, 254; R4-71-5).

On April 10, 1986, the Sheriff's legal advisor, David Farash, rendered a legal opinion in which Mr. Farash responded to the question, "Does the Sheriff's Office have to allow a Seventh Day Adventist every Saturday off work?" Farash responded as follows:

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[1] At no time during Plaintiff's job interview, during his employee orientation or his training at the academy, did Plaintiff mention his religious needs to be accommodated. Only after completing the academy did Plaintiff mention his needs to be off work on Saturdays. This is true notwithstanding the fact that Plaintiff always knew the job was a 24 hour a day, seven day a week job.

> Other cases under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows such shift trading practice, I see no problem with requiring the employee to work Saturdays and having him work out the details of his shift trades with other employees (DX 13; R4-71-5).

Shortly after the legal opinion was rendered, Lieutenant Deaton advised Plaintiff that his request for a permanent day off had been denied (R5-78-68). On May 9, 1986, Major Cook and Plaintiff met and discussed the legal opinion and how the Department would continue to try to work with Plaintiff within the meaning of the legal opinion (DX 15,16; R5-78-69, 70; R6-79-50, 51). The primary method by which Defendant and Major Cook attempted to accommodate Plaintiff was to allow Plaintiff to trade days off with other deputies (R6-79-48, 51). In addition to allowing swapping, Plaintiff was also allowed to use sick days, vacation, holiday and compensatory ("comp") time to observe his Sabbath (DX 53; Deitch 17, 18; R6-79-160). In helping facilitate his swaps, Major Cook gave a specific instruction to Plaintiff and to his jail supervisors that Plaintiff should be allowed to trade days off and that his supervisors should assist him in any way possible to allow him to communicate with deputies to request trading days off (R6-79-49, 51, 54, 71).

To further help facilitate the swaps for the Plaintiff, he had access to a bulletin board that he could use to post his request (R6-79-53,

131, 192; R4-71-6). Additionally, a roster sheet was available to the Plaintiff (R5-78-161; R4-71-6). Moreover, after roll call, deputies were also allowed to make any announcements such as a request to swap days off (R6-79-53, 130). Plaintiff never availed himself of these opportunities (R5-78-160; R6-79-132, 206; R4-71-6). Even though Plaintiff wrote various memos to his superiors (see, e.g., DX 11, 15, 16, 17, 22, 24), he never wrote any memo complaining about the inability to swap days off (R5-78-161). Even though Colonel Parrish told Plaintiff to come see him if he was having trouble finding someone to swap days off with him, Plaintiff never talked to Colonel Parrish about his problems finding other deputies to swap days off (R5-78-162;R6-79-210, 261).

On May 24, 1986, Plaintiff failed to show up for work (DX 22, 23; PX 21; R6-79-116-117; R4-71-6). Sergeant Fitch recommended Plaintiff's termination as a result of his no show on May 24, 1986 (DX 22). Plaintiff was not terminated but rather counseled by Major Cook regarding the seriousness of his violation (R6-79-65, 68). On Friday evening, August 15, 1986, Plaintiff was assigned the tower to 200 Central (R6-79-124; R4-71-6). Two Hundred Central is where the high-risk inmates are housed (R6-79-112; R4-71-6). The deputy assigned to the tower is responsible for observing the safety of the two other deputies who are assigned inside the cell and locked behind two double doors (Id.; R4-71-6). On that evening, Plaintiff abandoned his post and left the two deputies unattended with the most dangerous inmates behind double locked doors thereby endangering their lives (R6-79-65, 96, 124, 125).

In all, Plaintiff either failed to show up to work or abandoned his post during the middle

of his shift on eight (8) separate occasions (see DX 22, 23, 27, 29, 31, 32, 33, 40, 41, 42, 43, 45, 46, 47 and 48; R5-78-136). Plaintiff conceded that he failed to show up at work even when he knew that his request for time off had been denied (R5-78-119). In short, absent exceptional circumstances, Plaintiff admitted that he was not going to work his Sabbath regardless whether he was scheduled or not (R5-78-80; R6-79-68, 116-117, 118). As a result of Plaintiff's failure to report to work on May 24, 1986, and his abandonment of his post on August 16, 1986, discipline was initiated against Plaintiff (DX 29, 37; R6-79-67, 68).

Under the Sheriff's operating procedures and as mandated by law, a pre-disciplinary hearing was held on August 29, 1986 (PX 33; R4-71-2). On September 12, 1986, Major Cook recommended Plaintiff's termination (DX 37). After careful consideration of the recommendation, Colonel Parrish recommended to Sheriff Heinrich that Plaintiff be terminated (DX 44). Sheriff Heinrich concurred in the recommendation (DX 49; Heinrich 44; R4-71-2).

Plaintiff claimed that there were a number of accommodations (transfers) available to him by which he would not be required to work on his Sabbath. Plaintiff was not even eligible for these transfers because he had not completed his probation, which lasted for one year (R6-79-59-62, 147, 148, 158, 168-170, 174-175, 188-189; Cook 33; R4-71-7). Plaintiff also understood that he had to apply for these transfers and there was no guarantee that he would get the transfers in the future (R5-78-186; R6-79-267). Even if Plaintiff had been transferred to a bailiff's position or to a specialty squad, this still would not have solved all the problems. Specifically, bailiffs are sometimes called upon

to work Friday nights and Saturdays (Heinrich 52, 53; Cook 25). Transportation works seven (7) days a week (Davenport 31). Squad 10 (a recreational squad performing various functions within the jail, including exercising the prisoners, running the canteen and similar such assignments) does not necessarily work Monday-Friday (R6-79-188).

B. The Trial Court's Decision

The trial court found in favor of the Defendants. Specifically, the trial court held:

> [T]he Court finds that the neutral rotating shift system used by the Sheriff in conjunction with the availability of the use of vacation, compensation and sick day time and swaps with fellow officers were reasonable accommodations sufficient to meet the requirements of Title VII in this case.

In addition, in focusing on the issue of undue hardship, the trial court also found:

> Because of the public health, safety and welfare implications of law enforcement work, conferring upon Beadle the privileges of a permanent day off each week in this circumstance is more than a de minimis requirement.
>
> * * *
>
> The operation of the Sheriff's Office is a 24-hour a day, 7-day a week, 365-day a year operation. Its purpose is to maintain a work-force

> that secures inmates and preserves the safety of the public. Detention involves a continuous routine of watching, listening and observing and a confining, stressful and dangerous environment. Mistakes can lead to death, escape or injury. Special permanent days off for an employee in particular could adversely affect staff morale and jeopardize safety and security. The allowance of a permanent weekly day off to an employee in a detention facility which operates under a neutral rotating shift system is inconsistent with sound jail management.

C. The Court of Appeals Decision

The Eleventh Circuit Court of Appeals affirmed the trial court's decision. In affirming the decision of the lower court, the Eleventh Circuit held, among other things, the following:

> We find the Department's attempts to accommodate appellant Beadle's religious practices within the workings of its neutral rotating shift system were "reasonable" for purposes of Title VII. We, therefore, hold that Beadle's discharge from employment with the Department for refusing to work his sabbath was neither discriminatory nor unlawful.

In addition, the Eleventh Circuit also disagreed with Beadle's interpretation of Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977) and stated:

> Beadle attempts to distinguish the Court's holding in Hardison by arguing that there the Court was speaking not of a neutral rotating shift system, but rather of a 'bona fide seniority system.' While we recognize that Hardison specifically concerned the sufficiency of a seniority system under Title VII to determine employee eligibility for weekends off, we are not persuaded that the Court intended that its holding apply only to those systems. Rather, our reading of Hardison suggests that the Court was concerned primarily with the neutrality of the system utilized.

In analyzing the facts of this case in relation to the Hardison decision, the Eleventh Circuit concluded:

> [I]t is undisputed that the Department allowed Beadle to arrange shift swaps with his co-workers. To aid Beadle in arranging these swaps, the Department provided him with an employee roster sheet which included all his co-worker's schedules. The Department also allowed Beadle to advertise his need for shift swaps during daily roll calls and on the Department's bulletin board. Numerous courts have relied on Hardison in holding that similar authorization of voluntary swaps instituted by employers with a neutral rotating shift systems constitute a reasonable accommodation under Title VII. See, e.g., Brener v. Diagnostic Center Hosp., 671 F.2d

141 (5th Cir. 1982); Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989, 108 S. Ct. 1293, 99 L.Ed. 2d 503 (1988); United States v. City of Albuquerque, 545 F.2d 110 (10th Cir. 1977), cert. denied, 433 U.S. 909, 97 S. Ct. 2974, 53 L.Ed. 2d 1092 (1977). Our interpretation of Hardison leads us to the same conclusion in this case.

Finally, the Eleventh Circuit, in discussing Beadle's obligation to work with the reasonable accommodations offered to him, found the following:

> Finally, we believe it important to note the Magistrate Judge's finding that Beadle failed to take full advantage of the accommodations offered to him by the Department. Although the Department made provisions for Beadle to announce his need for shift swaps during roll call and to advertise his needs for swaps on the Department's bulletin board, Beadle did neither of these. While we recognize an employer's duty to reasonably accommodate the religious practices of its employee, we likewise recognize an employee's duty to make a good faith attempt to accommodate his religious needs through means offered by an employer. (Citations omitted). We find that the record adequately supports the Magistrate Judge's finding that Beadle failed to satisfy this duty.

REASONS FOR DENYING THE WRIT

The Court of Appeals correctly held that employers satisfy their duty of reasonable accommodation by working within their neutral rotating shift system.

In his Petition, Beadle primarily relies upon two decisions in support of his position why this Court should grant his Writ of Certiorari. The first is Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988). In Smith, there was no discussion whether the defendant employed a neutral rotating shift system such as the one used by the Defendant in this action. In any event, the Smith decision supports the conclusions reached by the lower courts in this action. Specifically, in Smith, the employer argued that it met its duty of reasonable accommodation under Title VII by consenting to shift swapping. 827 F.2d at 1086. The Smith court noted:

> Undoubtedly, one means of accommodating an employee who is unable to work a particular day due to religious convictions is to allow the employee to trade work shifts with another qualified employee. Other circuits have held that when an employer allows such a trade, it has reasonably accommodated its employees. See, e.g., Brener, 671 F.2d at 146; Albuquerque, 545 F.2d at 114.

Id. at 1088. In Smith, the court found that allowing the plaintiff to swap shifts was not a reasonable accommodation in this particular case since the employee's religious beliefs

prohibited from arranging a shift swap for himself. Id. The Smith case is clearly distinguishable from this case because there is no dispute that Plaintiff Beadle's religion did not prohibit him from having others arrange shift swaps for him. As a matter of fact, at trial, Plaintiff Beadle continually suggested that the Sheriff's Office should make other employees swap shifts with him. In Smith, the court noted that but for Smith's religious objections of having other people arrange shift swaps for him, the defendant's practice of allowing shift swapping was a reasonable accommodation to the plaintiff. Specifically, in Smith, the court noted:

> We think it clear that if Smith had no religious qualms about asking others to work the Sundays he was scheduled to work, then Pyro's proposed accommodation [shift swapping] would have been reasonable.

Id. at 1088. Based upon the above holding, it is clear that Smith supports the decision of the lower courts and not the position taken by the Plaintiff in this action.

Plaintiff Beadle also relies upon EEOC v. Ithaca Indus., Inc., 829 F.2d 519 (4th Cir. 1987), rev'd, 849 F.2d 116 (en banc), cert. denied, 488 U.S. 924 (1988). Ithaca Industries did not employ a neutral rotating shift system such as that used by the Defendant. In Ithaca Industries, the employer apparently asked for volunteers to work on Saturday, and if the company could not find enough volunteers, they would select additional workers. The *en banc* Fourth Circuit Court of Appeals reversed the district court's finding which found in favor of the company concluding that Ithaca had made no

effort to accommodate Dean, but that an absolute refusal to work on Sunday was so unreasonable on its face, that no reasonable accommodation was possible. The *en banc* court reversed because it found that the employer made no efforts to accommodate the plaintiff. It noted that in Hardison, TWA made several efforts to accommodate the employee, including, among other things, job swaps. The Ithaca Industries court also cited the EEOC regulations which provide that a means of accommodating religious practices include voluntary swapping. Therefore, Ithaca Industries did not really address itself with the issue of a neutral rotating shift system. More importantly, Ithaca Industries found that employee swapping was a means of accommodating an employee's religious beliefs.

There is no conflict within the circuits, as suggested by Plaintiff Beadle, to warrant this Court to exercise its discretionary jurisdiction. Simply put, as the Eleventh Circuit noted, courts have uniformly held that when an employer allows voluntary swaps within its neutral rotating shift system and further accommodates the employee by facilitating those swaps, even if unsuccessful, an employer has met its duty of reasonable accommodation and, therefore, the statutory inquiry is at an end. See Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986).

A. DEFENDANT WAS NOT REQUIRED TO GO BEYOND ITS NEUTRAL ROTATING SHIFT SYSTEM TO FURTHER ACCOMMODATE PLAINTIFF'S RELIGIOUS BELIEFS

Both lower courts correctly relied, in part, upon the holding of Trans World Airlines, Inc. v. Hardison, supra (R4-71-11-13). In

Hardison, supra, the Supreme Court explained that Title VII does not require a defendant to alter its neutral rotating shift system. In Hardison, the trial court ruled in favor of defendant TWA, and the Eighth Circuit reversed holding essentially that TWA made "no more than negligible" efforts to accommodate the plaintiff. Id. at 70. Implicit in the findings of the Eighth Circuit was that TWA had failed in its duty to reasonably accommodate by not working out a job swap for the plaintiff. Thus the central issue before the Supreme Court then was whether TWA was required to alter its seniority system. The Supreme Court reversed the Eighth Circuit, holding instead that:

> The system itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees. As will become apparent, the seniority system represents a neutral way of minimizing the number of occasions when an employee must work on a day that he would prefer to have off.

Id. at 78 (emphasis supplied). Explaining further, the Court discussed the competing interests:

> It was essential to TWA's business to require Saturday and Sunday work from at least a few employees even though most employees preferred those days off. Allocating the burdens of weekend work was a matter for collective bargaining. In considering criteria to govern this allocation, TWA and the union had two alternatives: adopt a neutral system, such as seniority, a lottery,

> or rotating shifts; or allocate days off in accordance with the religious needs of its employees. TWA would have had to adopt the latter in order to insure Hardison and others like him of getting the days off necessary for strict observance of their religion, but it could have done so only at the expense of others who had strong, but perhaps non-religious reasons for not working on weekends. There were no volunteers to relieve Hardison on Saturdays and to give Hardison Saturdays off, TWA would have had to deprive another employee of his shift preference at least in part because he did not adhere to a religion that observed the Saturday Sabbath.

Id. at 80-81 (emphasis supplied). The Supreme Court resolved that, "Title VII does not contemplate such unequal treatment." Id. at 81. The Court concluded that it would be "anomalous" to find that a definition of reasonable accommodation under Title VII required an employer to deny shift preferences to some employees to accommodate the religious needs of others. Id. In summation, the Court held, "[a]bsent a discriminatory purpose, the operation of a seniority system cannot be an unlawful employment practice even if the system has some discriminatory consequences." Id. at 82 (emphasis supplied).

Following Hardison, several courts have confirmed the Supreme Court's interpretation that an employer may meet its duty of reasonable accommodation by simply operating within the existing framework of its neutral scheduling system. For example, in Murphy v. Edge Memorial

Hosp., 550 F. Supp. 1185 (M.D. Ala. 1982), the court first noted Hardison's holding that the operation of a neutral scheduling system cannot be an unlawful practice even if it has discriminatory consequences. Id. at 1188-89, citing Hardison, 432 U.S. at 82. Rather than finding some affirmative duty to alter such a scheduling system, the Murphy court, in ruling in favor of the defendant employer, reasoned:

> It is therefore apparent from Hardison that an employer in meeting his Title VII obligation as to the religious practices of his employees, is not required to alter such a neutral scheduling system, but may satisfy the reasonable accommodation requirement by demonstrating efforts to accommodate an employee within the neutral system.

550 F. Supp. at 1189 (emphasis added). Likewise, the Fifth Circuit addressed this same issue in Eversley v. MBank Dallas, 843 F.2d 172 (5th Cir. 1988). In Eversley, the plaintiff claimed that MBank should have either required one of the two individuals on the earlier (non-conflicting) shift to switch with him, or in the alternative, to demonstrate that it would have suffered undue hardship by requiring such a trade. Id. at 175.

The Fifth Circuit rejected the plaintiff's claim and, in accord with the Supreme Court's decision in Hardison and the Fifth Circuit's earlier decision in Brener, supra, the court held:

> [W]e conclude that it is unreasonable and an undue hardship on an employer to require an employer to force

> employees, over their express refusal, to permanently switch from a daytime to a nighttime shift in order to accommodate another employee's different Sabbath observation.

Id. at 176.

B. DEFENDANT MADE REASONABLE ACCOMMODATIONS TO THE PLAINTIFF BEYOND ITS NEUTRAL ROTATING SHIFT SYSTEM

Both lower courts correctly cited to a number of cases where an employer's actions within a neutral rotating shift system of permitting employees to trade days off was found to be a sufficient form of accommodation.[2] In addition to those cases cited by the trial court and the Eleventh Circuit, in Miller v. Drennon, 1991 WL 325291, 56 Fair Empl. Prac. Cas. (BNA) 274 (D. S.C. 1991), aff'd, 966 F.2d 1443 (4th Cir. 1992) the court considered the efforts of a county emergency medical service ("EMS") to accommodate the religious beliefs of a paramedic. To accommodate plaintiff, defendant distributed a memorandum to other EMS employees stating that voluntary shift swapping was permissible unless it would incur additional overtime and was purely voluntary. Defendant also provided plaintiff with a list of fellow EMS employees with telephone numbers to allow plaintiff to contact such employees for purposes of swapping shifts. Id. at 276-77. This is practically the same type of accommodation which the Magistrate Judge and the Eleventh Circuit

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[2] In the instant action, the evidence at trial showed that this is precisely what Defendant did by permitting Plaintiff to swap days off with other employees.

found in this case that Defendant offered Plaintiff, but he refused to effectively utilize.

The Miller court noted Hardison's holding that, "An employer which follows neutral, rotating shift schedule is not required to rearrange its scheduled in order to accommodate the religious practices of an employee." Miller v. Drennon, 56 Fair Empl. Prac. Cas. at 278, citing Hardison, 432 U.S. at 63, 84. The court also cited Brener, supra, Murphy, supra, and City of Albuquerque, supra, and found that defendant had met its burden of reasonable accommodation because it:

> [A]uthorized EMS technicians and senior paramedics to swap shifts with each other. Indeed the county provided plaintiff with a list of names and telephone numbers to facilitate his arranging to swap shifts with someone whenever he was scheduled to work with a female at one of the three substations to which he objected. The county also authorized plaintiff to use leave to avoid assignments when they presented a conflict with his religious beliefs.

Id. at 279. Additionally, in Moore v. A.E. Staley Mfg. Co., 727 F. Supp. 1156 (N.D. Ill. 1989), the court found a system of voluntary swaps within seniority based shift systems to be sufficient accommodation. In Moore, to accommodate plaintiff, the employer and the union, "[a]ctively solicited voluntary swaps from [plaintiff's] coworkers." The court granted summary judgment in favor of the defendants, finding:

> Staley and the Union maintain that their program of support and solicitation of voluntary swaps constitutes a reasonable accommodation. We agree and find that the system of voluntary swaps instituted by defendants was a reasonable accommodation. There is considerable authority to support this proposition (emphasis added).

727 F. Supp. 1160, citing Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988); Brener v. Diagnostic Center Hosp., 671 F.2d 141, 146 (5th Cir. 1982)("[u]ndoubtedly" permitting voluntary trades of days off is reasonable accommodation); City of Albuquerque, 545 F.2d at 114; and Eversley, 843 F.2d at 176.

In the instant case, both lower courts found that as a method of accommodation, Plaintiff was permitted to swap days off with fellow deputies, and, indeed, he did so on several occasions. Several officers in Plaintiff's chain of command gave directions for subordinate officers to find deputies who are willing to swap with Plaintiff. Moreover, as the lower courts found, "[T]o assist Beadle in facilitating a swap, the Sheriff made access to a bulletin board available so that Beadle could use it to post his request. Also, a roster sheet was made available to him" (R4-71-6).

C. DEFENDANT'S ACCOMMODATIONS EXCEEDED TITLE VII REQUIREMENTS ESPECIALLY WHEN CONSIDERING DEFENDANT'S NATURE OF BUSINESS

Both Plaintiff and Defendants agree with the lower courts' statement that the analysis of

reasonable accommodation under Title VII is made on a case-by-case basis. The Tenth Circuit explained, "The phrases 'reasonably accommodate' and 'undue hardship' . . . are relative terms and cannot be given any hard and fast meaning. Each case necessarily depends upon its facts and circumstances, and in a sense every case boils down to a determination as to whether the employer has acted reasonably." City of Albuquerque, 545 F.2d at 114. Because the courts utilize a case-by-case analysis, it follows that an employer's duties to accommodate varies from case to case. In City of Albuquerque, supra, the Tenth Circuit best summarized the balancing of interest between the public's health, safety, and welfare and the employee's Title VII rights when it stated:

> In our view when the 'business' of an employer is protecting the lives and property of a dependent citizenry, courts should go slow in restructuring his employment practices (citations omitted).

Id. at 114.

Other than City of Albuquerque, there are few Title VII religious accommodation cases involving public employers in a public safety, law enforcement or correctional function. The sole correctional case of which Defendant is aware is Blair v. Graham Correctional Center, 782 F. Supp. 411 (C.D. Ill. 1992), aff'd, 4 F.3d 996 (7th Cir. 1993), cert. denied, 114 S. Ct. 924 (1994). In Blair, the court considered a Seventh Day Adventist correctional officer's claim of religious discrimination against the Illinois Department of Corrections. Much like the Tenth Circuit in City of Albuquerque, in analyzing reasonable accommodation under Title

VII, the Blair court reasoned, "[i]n a paramilitary organization, it is even more difficult to accommodate employees who are restricted as to their assignments in view of the fact that the demands may overwhelm the organization." 782 F. Supp. at 414. The court applied this standard to a correctional facility:

> The personnel structure of Graham Correctional Center is analogous to a paramilitary organization. This Court notes the importance to the public interest in having a full staff of corrections officers on duty every hour of every day of the week, including sabbaths and religious holidays and in an institution such as Graham Correctional Center. Obviously, most everyone prefers not to work weekends and holidays. . . . If Defendants were required to amend the union agreement in order to accommodate all employees; religious practices, they would run the risk of having the correctional institutions undermanned, thereby endangering other employees and society.

782 F. Supp. at 414.

Similarly, the court considered the mission of the defendant employer, the FBI, in Ryan v. U.S. Dept. of Justice, 950 F.2d 458 (7th Cir. 1991), cert. denied, 112 S. Ct. 2309 (1992). In Ryan, an FBI agent refused a case assignment based on a personal religious belief which prevented him from investigating anti-military activity. In upholding the employer's discharge, the Seventh Circuit commented:

> Sympathy for a dedicated agent trapped between his career and his faith comes easily . . . It is difficult for any organization to accommodate employees who are choosy about assignments. For a paramilitary organization, the tension is even greater. . . . With good will all around, and flexibility on the part of Ryan's fellow agents, it just might be possible to make a go of it. Title VII does not, however, compel the FBI to attempt this . . . Compelled, as it is by Title VII, to have one rule for all of the diverse religious beliefs and practices in the United States, the FBI may choose to be stingy with exceptions lest the demand for them overwhelm it.

Id. at 462. This same rationale is compelling in the instant case. Plaintiff's apparent demand that he has no responsibility for finding an employee with whom to exchange days off and placing the onus on Defendant to either search for such deputies itself, or presumably, to relent and allow Plaintiff Beadle a special scheduling privilege--notwithstanding staffing demands--is simply not compelled by Title VII law either in terms of the consistent interpretation of Hardison, or as Defendant further urges, that in a paramilitary organization such as that used by Defendant.

D. DEFENDANT'S ACCOMMODATION OF ALLOWING PLAINTIFF TO TRADE DAYS OFF WAS REASONABLE EVEN IF PLAINTIFF WAS NOT ALWAYS ABLE TO FIND VOLUNTEERS WITH WHOM TO SWAP

Plaintiff argues in his Petition that at least at times, he was unable to find other detention deputies with whom he could trade days off to avoid working on his Sabbath. Plaintiff then concludes that because the accommodation did not work all of the time, it was not a reasonable accommodation.

In Moore v. A.E. Staley Mfg. Co., 727 F. Supp. 1156 (N.D. Ill. 1989), the Court rejected a similar assertion by the plaintiff. In particular, the plaintiff in Moore argued to the court that because under the voluntary swap system there still existed a conflict with his religious belief, there was no reasonable accommodation. The court disagreed, reasoning:

> [p]laintiff suggests that unless the measures proposed by the employer completely eliminate the possibility of a religious conflict, they cannot be reasonable. This absolutist interpretation of an employer's burden of accommodation is inconsistent with the thrust of judicial treatment of the issue.
>
> For example, Moore's interpretation of Title VII is inconsistent with the cases involving voluntary swap programs. Any voluntary system is at the mercy of its volunteers; the system will not work perfectly should co-workers be unwilling to swap. However, despite this possibility

> that voluntary swaps will not always resolve a scheduling conflict, courts have held that the programs are reasonable accommodations.

Id. at 1161, citing Brener, 671 F.2d at 145. See also Miller, supra, ("Of course, plaintiff's latitude to avoid shifts was limited by his abilities to find a substitute and by certain minimum staffing requirements. But these same limitations were present in Brener, City of Albuquerque, and Murphy, in all of which the courts found the duty of reasonable accommodation satisfied) 56 Fair Empl. Prac. Cas. (BNA) at 279, and Blair, supra, ("Consequently, this court finds that Graham Correctional Center and the Department of Corrections made reasonable -- albeit unsuccessful -- attempts to accommodate Blair's religious beliefs . . .") 782 F. Supp. at 414.

This holding is reasonable especially when read in context with the Hardison line of cases. If, as the Supreme Court held in Hardison, a neutral rotating shift system is a reasonable accommodation per se, then efforts to work within that system, even if not totally successful, must a fortiori constitute a reasonable accommodation.

E. PLAINTIFF'S ARGUMENT THAT AN ACCOMMODATION WHICH DOES NOT GUARANTEE THE ELIMINATION OF THE CONFLICT IS NOT REASONABLE IS WITHOUT MERIT

In support of his position that in order for an accommodation to be reasonable, it must eliminate the conflict between the employee's religious practice and his work requirements, Plaintiff relies on Lee v. ABF Freight Sys. Inc., 22 F.3d 1019, 1023 n.4 (10th Cir. 1994).

As conceded by the Plaintiff, the Lee court did not specifically rule whether an accommodation which does not eliminate the conflict is unreasonable. Specifically, in Lee, the court noted, "In this case, we do not decide whether a reasonable accommodation is one which must completely eliminate the employee's conflict." 22 F.3d at 1023 n.4. More importantly, in affirming the district court's summary judgment order in favor of the defendant employer, the Lee court noted:

> ABF's method of allocating 'runs' based on seniority was itself a significant accommodation of all of its employees.

22 F.3d at 1022 (emphasis supplied).

Another decision relied upon by Beadle in support of his position that the accommodation must eliminate the conflict in order to be reasonable, and one cited in the Lee decision, Wright v. Runyon, 2 F.3d 214 (7th Cir. 1993), cert. denied, 114 S. Ct. 1077 (1994), the Seventh Circuit affirmed the district court's summary judgment order in favor of the defendant employer. In affirming the district court's summary judgment order, the Seventh Circuit noted:

> Not only was the bidding process itself a reasonable accommodation, but Rudolph also suggested to Wright that he would think about some other options before submitting his resignation. The USPS admittedly did not investigate every possible way in which Wright could avoid a conflict between his work requirements and his religious practices, but, by

> providing at least one reasonable accommodation, the USPS discharged its obligations, citing Ansonia Bd. of Educ. v. Philbrook, 107 S.Ct. at 372.
>
> * * *
>
> Perhaps there were other steps that could have been taken here that would have allowed Wright to continue working at the USPS without infringing his religious convictions. We believe, however, that the USPS has done all that Title VII requires and, therefore, that it is entitled to summary judgment.

2 F.3d at 217 and 218.

Finally, the other decision cited in Lee and also relied upon by Plaintiff Beadle, Cooper v. Oak Rubber Co., 15 F.3d 1375 (6th Cir. 1994), also held in favor of the defendant employer on plaintiff's claim of religious discrimination. Interestingly, the Cooper decision concerned itself with whether the defendant employer could have accommodated the employee's religious objections to Saturday work without undue hardship to its business rather than if the employer made reasonable accommodations to the plaintiff employee. In finding in favor of the employer, the Cooper court noted, "It is evident that the only accommodation acceptable to Cooper would have been the elimination of any requirement that she work or report for work on Saturdays." 15 F.3d at 1379. In holding in favor of the defendant employer, the Cooper court held:

> Finally, it is no answer to suggest that Oak could have permitted one fewer employee to be on vacation or otherwise absent in order to allow Cooper every Saturday off. As noted by the Court in Hardison, it 'would be anonymous to conclude that by "reasonable accommodation" Congress meant that an employer must deny the shift and job preferences to some employees as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others.' Citing Hardison, 432 U.S. at 81.

15 F.3d at 1380. Accordingly, even the cases cited by Beadle do not support the position that an accommodation is unreasonable unless it guarantees the elimination of the conflict.

G. PLAINTIFF'S ARGUMENT THAT DEFENDANT HAD A DUTY TO NEGOTIATE AND WORK WITH HIM IN REGARD TO FINDING A REASONABLE ACCOMMODATION IS ALSO WITHOUT MERIT

Plaintiff has also suggested that Defendant had a statutory duty to sit down and negotiate with him in an attempt to work out a reasonable accommodation. The law simply does not require such action. Specifically, as stated above, in Ansonia, supra, the Supreme Court stated:

> Thus, where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship. As Hardison illustrates,

> the extent of undue hardship on the employer's business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship.
>
> * * *
>
> We accordingly hold that an employer has met its obligations under § 701(j) when it demonstrates that it has offered a reasonable accommodation to the employee.

479 U.S. at 69 (emphasis added).

H. PLAINTIFF'S ARGUMENTS THAT DEFENDANT MUST PROVIDE FURTHER ACCOMMODATIONS ARE WITHOUT MERIT

Plaintiff finally suggests that Defendant's actions, in permitting Plaintiff to swap days off with other deputies, represented no real accommodation because such swapping was permitted for other reasons. Plaintiff suggests that it was incumbent upon Defendant to make some sort of affirmative initiation of an accommodation and then to engage in a type of bargaining process with Plaintiff over the accommodations.

This supposed requirement of negotiation runs afoul of recent Supreme Court decision in Ansonia, supra. In Ansonia, the Court explained:

> That by its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation . . .. Thus, where the

> employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship.

Id. at 68. Under Ansonia, there is no bargaining contemplated if the employer has accommodated an employee. Moreover, if the employer accommodated the employee through an existing system, the inquiry is at an end.

CONCLUSION

Plaintiff has made the same legal arguments to the Magistrate Judge and the Eleventh Circuit as he does to this Court. Both lower courts have properly disagreed with his interpretation of the law. Both lower courts have correctly applied United States Supreme Court and Eleventh Circuit precedents in ruling that the Hillsborough County Sheriff's Office did not discriminate against him, the Sheriff's Office afforded him reasonable accommodations in accordance with the requirements of Title VII and that Plaintiff did not take full advantages of the accommodations offered to him. Accordingly, there has been no error committed by either of the lower courts and there is no reason why this Court should grant Plaintiff's Petition for Writ of Certiorari.

Dated this 2nd day of May, 1995.

Respectfully submitted,

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